in absence of former censure. In the instant case, the quasi-business character of a collection agency may allow for some of the advertising privileges of ordinary business. Furthermore, the pre-existing relation of attorney and client would seem technically to justify the solicitation. N. Y. Code of Ethics § 27. But the continued use of deceptive letterheads and the failure to abide by the spirit of the court's direction in former proceedings indicate an attitude which makes the attorney unreliable and render him unfit for public service. Under the aggravated circumstances the disbarment seems fully warranted and the attempt of the court to uphold high and worthy standards of professional conduct must be approved.

BAILMENTS—CONTRACT TO RETURN IN GOOD CONDITION—IMPOSSIBILITY OF PERFORMANCE.—By a written contract, providing that the chattels were to be returned in as good condition as when received, the defendant hired a team of horses from the plaintiff. During the period of the bailment, through no fault of the defendant, one of the horses became sick, and was shot by an agent of the Society for the Prevention of Cruelty to Animals. In an action to recover the value of the horse, *held,* for the defendant. *Gouled* v. *Holwitz* (N. J. L. 1921) 113 Atl. 323.

There is a conflict as to the liability of a bailee who has contracted to return the bailment "in good condition," or "in as good condition as when received." A majority of the courts hold that such a provision imposes only the duty implied by law in the ordinary bailment for hire, *viz.,* to use reasonable care. *Sawyer* v. *Wilkinson* (1914) 166 N. C. 497, 82 S. E. 840; see *Sanchez* v. *Blumberg* (Tex. 1915) 176 S. W. 904, 905. But other courts treat the bailee as an insurer. *Laughren* v. *Barnard* (1911) 115 Minn. 276, 132 N. W. 301; *Harvey* v. *Murray* (1884) 136 Mass. 377. The former construction seems the more consonant with the real intention of the parties. By the provision the parties neither preclude nor waive the excuse of impossibility of performance, but merely express what the law would imply had they remained silent. There is no doubt that one may, by express terms, impose upon himself a higher obligation than that implied by law. Thus, many courts have declared that express provisions "to return the chattel or pay for it" made the bailee an insurer. *Grady* v. *Schweinler* (1907) 16 N. Dak. 452, 113 N. W. 1031; *Thornton* v. *Hamilton* (1919) 32 Idaho 304, 181 Pac. 700. But these decisions seem doubtful where there is no express agreement by the bailee to pay at all events. The court in the instant case, following the better view, held that the continued existence of the chattel was an implied condition of the contract. Its destruction without the fault of the defendant was therefore an excuse for nonperformance. *Cf. Emerich Outfitting Co.* v. *Siegel-Cooper Co.* (1908) 237 Ill. 610, 86 N. E. 1104.

BANKRUPTCY—SET-OFF AND COUNTERCLAIM—STOCKHOLDER'S LIABILITY FOR STOCK SOLD AT LESS THAN PAR.—The defendant, a stockholder in a bankrupt corporation, had received his stock in consideration of land worth one-fourth of the stock's par value. The corporation was his debtor on another claim. In a suit by the trustee in bankruptcy for the remainder of the value of the stock, *held, inter alia,* that the defendant could not set off the sum owed him by the corporation. *Kaye* v. *Metz et al.* (Cal. 1921) 198 Pac. 1047.

A trustee in bankruptcy, with some exceptions, acquires the same rights as the bankrupt has, and is subject to the same counterclaims. *Wasey* v. *Whitcomb* (1911) 167 Mich. 58, 132 N. W. 572. So with a trustee of a corporation. *Shields* v. *Shields Constr. Co.* (1914) 83 N. J. Eq. 21, 89 Atl. 1022. A set-off is only allowed where there is mutuality in that the debts are due to and owing from both claimants in the same capacity. See *McQueen* v. *Fisher* (1918) 22 Ga. App. 394, 95 S. E. 1004. Though the creditors have an equitable claim against the

defendant stockholder for the unpaid balance of the value of the stock, the corporation has no claim since in fact the subscription contract has been executed. *Kiskadden* v. *Steinle* (C. C. A. 1913) 203 Fed. 375, 379. Therefore, there is no mutuality between the creditors' equitable claim and the individual claim of a stockholder against the corporation. See *Kiskadden* v. *Steinle, supra,* 380. Further, no set-off is allowed even where there is an actual unpaid balance on the subscription contract. See *Gilchrist* v. *Helena, H. S. & S. R. Ry.* (C. C. 1892) 49 Fed. 519, 521. For such balance is treated as if it were a trust fund for the benefit of creditors. See *Thoms & Brenneman* v. *Goodman* (C. C. A. 1918) 254 Fed. 39, 41. This theory actually places the trustee in a better position than the bankrupt. While theoretically there is little distinction between money due the corporation for stock and money due it for other chattels, the distinction made by the court is beneficial in that it protects the creditors who should be able to rely upon the full payment of the capital stock. The instant case properly denies a set-off.

CONTRACTS—OF REQUIREMENT—UNCERTAINTY—ESTIMATE.—(1) The defendant for one year was to furnish all paper needed by the plaintiff in a new branch of its business, the requirements being estimated in the contract as 400 tons. The actual requirements were less than 100 tons. *Held,* there was a valid requirement contract and not a contract for 400 tons. *National Pub. Co.* v. *International Paper Co.* (C. C. A. 2d Cir. 1920) 269 Fed. 903. (2) The defendant was to furnish all goods needed by the plaintiff in an established business. *Held,* the agreement was void for want of certainty. *American Trading Co.* v. *National Fibre & Insulation Co.* (Del. 1921) 114 Atl. 67.

Generally to have a contract, obligations must be certain. *Canet* v. *Smith* (1916) 173 App. Div. 241, 159 N. Y. Supp. 593. But in conformity to business custom, requirement contracts if reasonably certain, are upheld. See *Crane* v. *Crane & Co.* (C. C. A. 1901) 105 Fed. 869, 871; *Walker Mfg. Co.* v. *Swift & Co.* (C. C. A. 1912) 200 Fed. 529, 531. The courts say they are made reasonably certain by: (1) Reference to specifications under another contract. *Canfield* v. *Sauer* (C. C. A. 1908) 164 Fed. 833; (2) Parol estimate. *George H. Reeve, Inc.* v. *Refrigerating Co.* (1918) 105 Misc. 130, 173 N. Y. Supp. 568; (3) An estimate in the contract. *Walker Mfg. Co.* v. *Swift & Co., supra.* Such estimate is not binding, however, since the only obligation is to supply the actual requirements. *Lincoln Mining Co.* v. *Board of Education* (1918) 212 Ill. App. 586; *Walker Mfg. Co.* v. *Swift & Co., supra* (*semble*); but *cf. Staver Carriage Co.* v. *Park Steel Co.* (C. C. A. 1900) 104 Fed. 200. And the contract has been held binding though neither party knew just the amount required. *Dailey Co.* v. *Clark Can Co.* (1901) 128 Mich. 591, 87 N. W. 761; see *Oscar Schlegel Mfg. Co.* v. *Peter Cooper's Glue Factory* (N. Y. 1921) 132 N. E. 148, 150 (the lower court's decision upholding the contract was reversed on the ground that the "vendee" was not bound to purchase). And it is immaterial that the purchase be for resale to satisfy requisitions of customers. *Jenkins & Co.* v. *Anaheim Sugar Co.* (C. C. A. 1918) 247 Fed. 958; *Shipman* v. *Straitsville, etc. Co.* (1895) 158 U. S. 356, 15 Sup. Ct. 886 (*semble*). The court in the *Paper Co.* case held valid the plaintiff's requirement contract in a new venture. In the *Fibre Co.* case the court held the contract void in the absence of a parol estimate, but intimated in a dictum its presence would validate the contract. Since an estimate is often a guess, as appears in the *Paper Co.* case, it cannot make certain a requirement contract. And further it should be noted that the uncertainty extends only to a forecast of the extent of performance, but that in retrospect there would be no difficulty in assessing damages since the means of determining the extent of the contractual obligation are certain. See *Loudenback Fertilizer Co.* v. *Tennessee Phosphate Co.* (C. C. A. 1903) 121 Fed. 298, 300.